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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] Original. 1710

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

Motion for Leave to File Bill of Complaint and Bill of Complaint.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

Arthur W. Cross, Law Printer, 30-37 Lafayette Street, Newark, N. J.

INDEX

	Page
Notice	1
Motion	2
Statement	3
Proof of Mailing Notice	4
Bill of Complaint	5
I. Names, citizenship and residence of parties.	5
II. Statement of grounds of jurisdiction	6
III. Statement of facts	6
IV. Prayer for relief	11

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

TATE OF NEW JERSEY,
Plaintiff,

vs.

HE CITY OF NEW YORK,
Defendant.

NOTICE.

O:

Hon. James J. Walker, Mayor and
Hon. Arthur J. W. Hilly, Corporation Counsel, of the City of New

IRS:

Please be advised that on Monday, May 13, 1929, the laintiff will apply to the Court for leave to file its bill f complaint, a copy of which is annexed hereto.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

Dated: May 6, 1929.

Motion.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY,	*Plaintiff,*
vs.	
THE CITY OF NEW YORK,	*Defendant.*

IN EQUITY.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

Comes now the State of New Jersey, by its Attorney-General, and asks leave of the Court to file its bill of complaint herewith submitted.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

Statement.

The purpose of this suit is to restrain the defendant from committing a nuisance causing damage to the property of the plaintiff and its citizens and a menace to the health of its inhabitants, by dumping garbage and refuse in the Atlantic Ocean off the coast of the plaintiff.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

Proof of Mailing Notice.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY, *Plaintiff.*

vs.

THE CITY OF NEW YORK, *Defendant.*

PROOF OF MAILING COPIES OF MOTION AND BILL OF COMPLAINT.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

Vera E. Castellano, of full age, being duly sworn according to law, on her oath deposes and says:

1. On May 7, 1929, in the Post Office in the City of Newark, New Jersey, I deposited in sealed envelopes with the postage thereon by registered mail prepaid, a true printed copy of the annexed motion, notice and bill of complaint addressed to each of the following persons:

Hon. James J. Walker, Mayor, of the City of New York, City Hall, Borough of Manhattan, New York City, N. Y.

Hon. Arthur J. W. Hilly, Corporation Counsel, of the City of New York, Municipal Building, Borough of Manhattan, New York City, N. Y.

VERA E. CASTELLANO.

Sworn and subscribed before me
this 7th day of May, 1929.

JOHN J. GAFFNEY,
Attorney at Law of N. J.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

IN EQUITY.

BILL OF COMPLAINT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The plaintiff, State of New Jersey, by its Attorney-General, brings its bill of complaint against the defendant, The City of New York, and alleges and shows:

I.

1. The plaintiff is a State of the Union having its Capital and seat of government at the City of Trenton, Mercer County, New Jersey, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution, including the power and duty to protect and preserve to its citizens certain natural and unalienable rights, including the acquisition, possession and protection of property and of pursuing and obtaining safety and happiness. This

suit is instituted by direction of the Legislature of the plaintiff and with the approval of the Governor thereof, for the use and benefit of the plaintiff as the owner of the property hereinafter mentioned and also as *parens patriae* for the use and benefit of its citizens. Annexed hereto as Exhibit "A" and made a part hereof is a map showing certain geographical and other information referred to in this bill of complaint.

2. The defendant, The City of New York, is a body politic and corporate, organized and existing under and by virtue of the laws of the State of New York, under and by the authority of which it exercises the powers of local administration and government as a political subdivision of said State, having its seat of government in the Borough of Manhattan, in the City, County and State of New York.

II.

3. The jurisdiction of this Court depends upon the ground that this is a suit in which a state is a party, within the provisions of Article III, Section 2, of the Constitution of the United States.

III.

4. From Atlantic Highlands southerly to Cape May, a distance of more than 100 miles, the easterly side of the State of New Jersey borders on the Atlantic Ocean. The portion of this Ocean frontage particularly affected by the acts of the defendant hereinafter complained of extends from Atlantic Highlands to Beach Haven, a distance of more than fifty miles, and is occupied by a continuous succession of adjoining municipalities, which, by reason of their broad and gently sloping beaches, are adapted to, and their inhabitants are engaged in and rely for their

livelihood chiefly upon, the business of maintaining summer resorts, where great numbers of people of all classes and conditions congregate from various parts of the United States in the pursuit of rest, recreation and pleasure.

5. The plaintiff possesses the sovereign ownership of lands along the shore and under the waters of the Atlantic Ocean below high water mark throughout its beach front within its territorial limits, and the use of said beaches and the waters adjacent thereto are common to all the people of the State.

6. Said seashore is famous throughout the United States as a summer resort, and is improved by piers and wharves which are used for public recreation, commerce and fisheries, and by pavilions and bathing beaches and other conveniences used for the health, recreation and pleasure of the citizens of the plaintiff, and others who resort thereto for such purposes. Along the seashore and for several miles landward the territory is improved by hotels, pleasure resorts, country clubs, private residences and magnificent estates, provided and maintained at great expense by or for the benefit of summer visitors and residents.

7. The waters of the ocean adjacent to said shore and beaches are largely used for surf bathing and also for pleasure boating, fishing and other purposes. More than a hundred million dollars have been invested within the beach section particularly affected by the acts of the defendant hereinafter complained of, in hotels, bathing pavilions, landing and pleasure piers, boardwalks, shore boulevards, and other appurtenant facilities for pleasure, recreation and profit and several thousand persons are constantly employed to maintain and operate the same.

8. The section of the sea coast in question lies between the two great metropolitan areas of New York City

and Philadelphia, containing an aggregate population in excess of 12,000,000 people, and all parts thereof are within convenient commuting distance for daily travel by rail or motor vehicles from one or the other of said metropolitan areas. Many thousands of persons live along said seashore during the summer months, and commute daily to their places of business. Said seashore is visited by thousands of excursionists daily during the summer months, and also by many thousands of visitors over holidays and week-ends.

9. The growth, prosperity, and substantial property values of the seashore communities in question have resulted entirely from enterprises dependent upon the popularity and suitability of said waters, beaches and shorefront facilities for fishing, boating, bathing and other seashore recreations and pursuits, and the continuance of these advantages depends primarily upon the ability of the plaintiff, its municipalities and its citizens to keep the waters of the shore and bays pure and wholesome, and the beaches, public highways and shorefront property free from pollution, contamination and unsightly or unhealthy conditions.

10. Along the beach section in question are located more than a hundred fish pounds constructed under licenses issued by the plaintiff, and maintained by its citizens, who have invested therein approximately $700,000. During the year 1928 said fish pounds yielded approximately twenty million pounds of fish having a value of nearly one million dollars. Approximately 500 men are constantly employed in said industry.

11. The defendant, the City of New York, has a population of more than 6,000,000 people, which is increasing at the rate of approximately 136,000 persons annually. Said defendant disposes of its garbage and other refuse

by loading the same upon barges, which are towed out and dumped into navigable waters of the United States, off the coast of the plaintiff.

12. As the population and commerce of said defendant increases the amount of garbage and refuse thus disposed of constantly increases and at the present time many barge loads are thus disposed of daily.

13. Said garbage and refuse consist of all manner of domestic and industrial waste of a substantial nature, including boxes, crates, tin cans, bottles (empty, or containing drugs, medicines or chemicals), papers, rags, discarded household and toilet articles, dead domestic animals, mattresses, decayed or unmarketable fruits, vegetables, meats and fowls, the sweepings and refuse of public streets and markets, victuals and other vegetable and animal fragments from residences, hotels and restaurants; much of which garbage and refuse is in a putrid and decayed condition.

14. A considerable proportion of said garbage and refuse floats upon or beneath the surface of the sea in huge masses or islands, which obstruct and impede the navigation of fishing boats and other craft, until it is driven by winds and tides upon the beaches of the plaintiff, and cast by the waves into heaps and windrows thereon and under, over and about the piers, wharves and pavilions, adjacent boulevards and private property, where it decays and pollutes the sea and land, unless and until removed and disposed of by the municipalities or their citizens.

15. The removal and disposition of said accumulated garbage and refuse from the beaches, boulevards and other public places requires an expenditure by said municipalities of more than $100,000 per annum, and additional large sums by the citizens of the plaintiff to clean and

repair their private property of the filth and damage inflicted thereby.

16. Said garbage and refuse so co-mingled with the waters of the shore and cast upon the beaches and property of the plaintiff and its citizens is poisonous and otherwise injurious to human beings and to fish and other forms of marine life; obstructs and impedes the navigation of the waters of the United States; clogs, taints, injures and destroys the nets of the fish pounds; and renders the waters noxious and offensive and unfit for fishing, boating or bathing.

17. The dumping of said garbage and refuse by the defendant creates a public nuisance which seriously impairs the usefulness, wholesomeness and safety of said waters, beaches and shore front facilities, and of the property of the plaintiff, said municipalities and their citizens, and thereby greatly damages the property and seriously menaces the health, safety and welfare of the plaintiff and its citizens.

18. Said acts of the defendant are repeated and continued from day to day and, unless restrained, will be repeated and continued in perpetuity, to the manifest and irreparable injury of the health, safety, comfort, property and welfare of the plaintiff and its citizens and to others lawfully within the borders of the State, and the plaintiff is without any adequate remedy at law in the premises.

19. Said acts of the defendant takes the property of the plaintiff and its citizens without due process of law in violation of Article XIV, Section 1, of the Constitution of the United States.

20. Said acts of the defendant regulates and destroys the commerce of the plaintiff and its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

20. Said acts of the defendant deprive the plaintiff and its citizens of the natural advantages of their position along the seashore, contrary to the sovereign rights of the plaintiff as a member of the Union.

21. Said acts of the defendant violate Title 33, Chapter 9, Section 407 of the United States Code (approved June 29, 1906) and other laws of the United States.

22. Said acts of the defendant are otherwise detrimental to the interests of the plaintiff and its citizens.

IV.

In consideration whereof, and for as much as the plaintiff is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said defendant, the City of New York, may to the best and utmost of its knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived;

May it please the court, the premises considered, to grant unto the plaintiff the United States' writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, The City of New York, perpetually restraining and enjoining it, its contractors, officers, agents and employees, and all other persons acting or claiming or assuming to act under its authority, from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the Ocean or other waters of the United States off the coast of New Jersey, and from

otherwise defiling or polluting said waters and beaches, or procuring them to be defiled or polluted as aforesaid;

May it please the court, the premises considered, to grant unto the plaintiff the United States' writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, The City of New York, commanding it, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honors in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honors shall seem meet, and shall be agreeable to equity and good conscience.

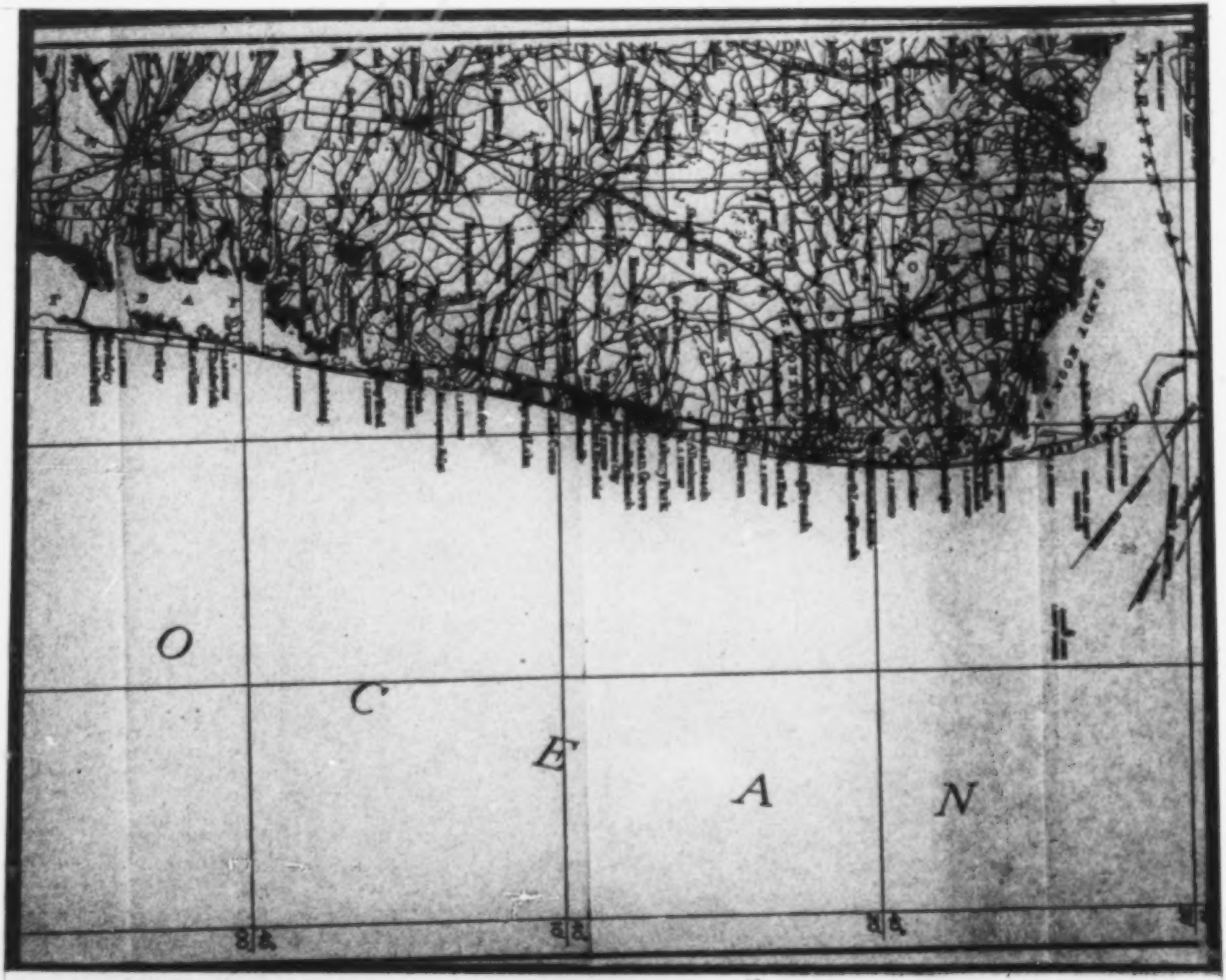
And that the plaintiff may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

And the plaintiff, as in duty bound, will ever pray, etc.

STATE OF NEW JERSEY,

By WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.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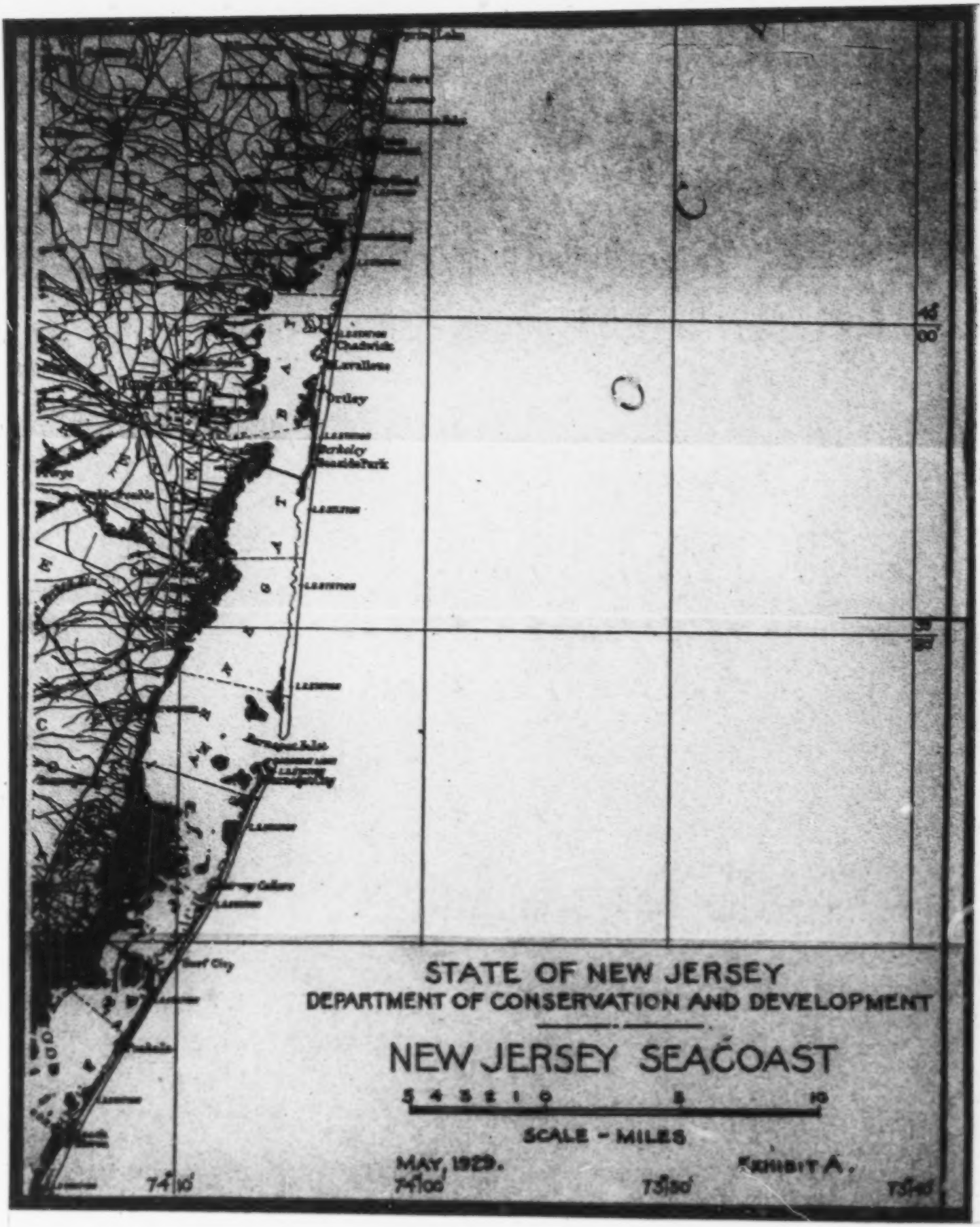
STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT
NEW JERSEY SEACOAST
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SCALE - MILES
MAY, 1929.
EXHIBIT A.
74°10'
74°00'
73°50'
73°40'

FILE COPY

FILED
MAY 22 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] Original [redacted]

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

MEMORANDUM ON BEHALF OF THE CITY OF NEW YORK WITH REGARD TO THE APPLICATION OF THE STATE OF NEW JERSEY FOR LEAVE TO FILE A BILL OF COMPLAINT.

The City of New York, now and at all times hereafter saving to itself all and all manner of benefit by objection, exception or otherwise that can or may be taken to the many errors, uncertainties and imperfections in the plaintiff's proposed bill of complaint herein contained, submits itself and its interests, upon the plaintiff's application, to the protection of this Honorable Court.

Respectfully submitted,
ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the proposed defendant,
The City of New York.

J. Joseph Lilly,
of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. , Original

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

IN EQUITY

MOTION FOR LEAVE TO FILE.

Comes now The City of New York, by its Corporation Counsel, and asks leave of this Court to file the annexed and herewith submitted memorandum upon the hearing and determination of the application of the State of New Jersey for leave to file a bill of complaint in a cause in equity to be entitled as above.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for The City of New York.